BAIL SLIP

The Appellant herein (viz.) Sahadevan, Accused in SC No.22/97 on the file of the Dsitrict & Sessions Judge, Ootacamund was directed to be released on bail as per order of this Court dt.6.5.1998 and made in Crl.M.P. No.3103/98 in CA NO.349/98 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2004

CORAM

THE HONOURABLE MRS. JUSTICE R.BANUMATHI

CRL.APPEAL No.349 of 1998

Sahadevan ... Appellant / Accused.

Vs.

State by:
G.2 Police Station, ... Respondent / Complainant
Udagamandalam.

This Criminal Appeal arises out of the Judgment dated 27.02.1998 made in S.C.No.22 of 1997 on the file of District and Sessions Judge, Udagamandalam.

For Appellant : Mr. K.Jegannathan

For Respondent : Mr.V.Jayaprakashnarayanan,
Govt. Advocate (Crl.Side)

J U D G M E N T

Appellant is the accused in S.C.No.22 of 1997 on the file of District and Sessions Judge, Odagamandalam. By the Judgment dated: 27.02.1998, the learned Sessions Judge has convicted the Appellant / Accused under S.354 I.P.C. for outraging the modesty of P.W.2 - Saradha and sentenced him to undergo Rigorous Imprisonment for a period of Two years; and also convicted him under S.323 I.P.C. for causing injuries to P.W.1 - Kannan and sentenced him to undergo Simple Imprisonment for a period of Six months; both sentences were ordered to run concurrently.

2. P.W.2 - Saradha, (aged about Nine years at the time of occurrence) is the daughter of P.W.1 - Kannan and P.W.3 - Baby. The

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accused and P.Ws.1 to 3 are the residents of Morakkutti Village. On the date of occurrence - 12.01.1996 - 7.00 p.m., P.W.2 - Saradha went outside to attend the nature's call. At that time, the accused followed her and committed Rape on her in the Tea Estate of one Raju. When P.Ws.1 and 3 returned back to their house at 7.15 p.m., they found P.W.2 crying. When they asked her, P.W.2 informed them that the accused Sahadevan committed Rape on her and that he has also threatened her. P.W.1 - Kannan, father of P.W.2 complained the act of the accused to other Villagers. On hearing the same, the accused beat P.W.1 with Stick causing him injuries. Since on that date it was very late, P.W.2 could not be taken to hospital immediately.

3. On the next day - 13.01.1996, P.W.3 - Baby had taken her daughter P.W.2 to Ooty Government Hospital. P.W.10 - Dr.Shantha has examined P.W.2 at 9.45 a.m. On examination, she has noted:- "... External genetalia normal; Vagina easily admits one finger ..." Opining that P.W.2 might not have been subjected to Recent Rape, P.W.10 has given Ex.P.9 - Final Report.

4. P.W.9 - Dr.Sivakumar, attached to Ooty Government Hospital has examined P.W.1 - Kannan on 13.01.1996 - 8.00 a.m. and noted:- Two linear contusions on the back between scapula and contusion on the right arm. Opining that the injuries were simple in nature, P.W.9 issued Ex.P.7 - Accident Register relating to P.W.1. Regarding the admission of P.Ws.1 and 2 in the Ooty Government Hospital, intimation was sent to Denaducombai Police Station.

5. P.W.11 - Head Constable received the intimation from Ooty Government Hospital. He went to the Hospital at 3.00 p.m. and recorded Ex.P.1 - Statement from P.W.1 - Kannan. On the basis of Ex.P.1, a case was registered in Crime No.3 of 1996 under Ss.376 and 323 I.P.C. under Ex.P.10 - First Information Report.

6. P.W.13 - Inspector of Police, Denaducombai has taken up the investigation. Scene of occurrence was inspected in the presence of P.W.5 - Kuppan and one Murugan. Ex.P.2 - Observation Mahazar and Ex.P.17 - Rough Plan were prepared on the scene of occurrence. On 16.01.1996 - 9.00 a.m., the accused was arrested in the presence of P.W.6 - Palanisamy and one Kakkan. When being interrogated, the accused had voluntarily given a Confession Statement, which led to the recovery of M.O.4 - Dhoti and M.O.5 - Underwear under Ex.P.19 - Seizure Mahazar. The accused was remanded to Judicial Custody.

7. The accused was also sent for Medical Examination. P.W.7 - Dr.Karthikayan has examined the accused on 19.01.1996. As per the Radiological Examination, the accused was found to be aged Nineteen Years. His Semen was taken for Chemical Analysis. As per Seminal Analysis, accused Sahadevan has been found to be " FERTILE ". Ex.P.5 is the Accident Register of the accused.

8. The seized material Objects were sent for Chemical Analysis. P.W.14 - Inspector of Police had taken up the further investigation. Upon completion of all formalities of investigation,

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P.W.14 had filed the Charge Sheet against the accused under Ss.376 and 323 I.P.C.

9. To substantiate the Charge of Rape against the accused, in the trial Court, P.Ws.1 to 14 were examined. Exs.P.1 to P.19 were marked. M.Os.1 to 5 were produced. The accused was questioned under S.313 Crl.P.C. about the incriminating evidence and circumstances. Denying all of them, the accused has stated that false case has been foisted against him.

10. Referring to the evidence of P.W.10 – Dr.Shantha, the learned Sessions Judge found that there was no sign of Rape and that there was no Penetration and finding that the offence of Rape is not proved, acquitted the accused under S.376 I.P.C. In consideration of the evidence, the learned Sessions Judge found that the accused had intentionally outraged the modesty of P.W.2 and convicted the accused under S.354 I.P.C. For causing injuries to P.W.1, the accused was convicted under S.323 I.P.C. and sentenced to undergo Imprisonment as aforesaid in Para (1).

11. Aggrieved over the findings and conviction of the trial Court, the Appellant / Accused has preferred this appeal. Assailing the conviction, the learned counsel for the Appellant / Accused has contended that the trial Court having acquitted the accused under S.376 I.P.C., erred in convicting him under S.354 I.P.C. It is also contended that it is not safe to base the conviction on the sole testimony of P.W.2 – Saradha. Mainly placing reliance on the evidence of P.W.10 – Dr.Santha that the external organs of the private parts of the victim girl was found to be normal, it is contended that in the absence of any evidence that P.W.2 was subjected to force and violence, the conviction for Sexual Molestation under S.354 I.P.C. is also unsustainable. In any event, it is contended that the accused then aged only Nineteen Years and a Student of Plus 2, might have committed the offence in slight temptation and the learned counsel prays for Mercy and Modification of the sentence.

12. Placing much emphasis upon the evidence of P.W.1 – victim girl that she was Sexually Molested and that Rape was committed on her is well corroborated by the evidence on record, Mr.V.Jayaprakash Narayanan, learned Government Advocate (Crl.Side) has submitted that the prosecution has well proved the guilt of the accused. Contending that the evidence of P.W.2 is well corroborated by the evidence on record, learned Government Advocate has submitted that the conviction is a well balanced one and that there is no reason warranting interference.

13. In consideration of the submissions of both sides, Judgment of the trial Court, evidence and materials on record, the point that arises for consideration in this appeal is:- Whether the conviction of the Appellant / Accused under Ss.354 and 323 I.P.C. suffers from any infirmity warranting interference ?

14. P.W.2 – Saradha is the daughter of P.W.1 – Kannan and

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P.W.3 – Baby. They are residents of Morakkutti Village. Their house is situated on the Northern Side. Further North is the house of the accused. On 12.01.1996 – 7.00 p.m., P.W.2 went outside to attend the call of nature in the hidden place – Tea Estate of Raju. Following her to the hidden place / Tea Estate of Raju, the accused made her lie down and lifting her Skirt, the accused committed Rape on her. Despite her shouting and crying, the accused did not leave her. The accused threatened her saying **"யாரிடமும் சொன்னால் உன்னை என்ன செய்வேன் பார்".** Fearing the accused, P.W.2 returned back to her house and kept waiting for return of her parents.

15. A little while later – at about 7.15 p.m., parents of P.W.2 – Saradha (P.Ws.1 and 3) returned back to their house. P.W.2 informed them about the Sexual act committed on her by the accused. On hearing the same, P.W.1 - Kannan loudly informed the same to other Villagers viz. Raja, Aandi and Murugan. On hearing about the same, the accused came there and beat P.W.1 with Stick on his back side. P.W.2 has clearly spoken about the act of Rape committed on her by the accused and that she later informed the same to her parents.

16. At the time of occurrence, P.W.2 was studying in IV Standard. At the time of examination before the trial Court, she was aged about Eleven Years. The learned Sessions Judge had initially put questions to P.W.2 to know about her understanding. The Court has satisfied itself about the intelligence and general understanding of P.W.2. Thereafter the Sworn Statement of P.W.2 was recorded. In her evidence, P.W.2 has clearly spoken about the occurrence pointing the accusation finger against the Appellant / Accused.

17. Scene of occurrence is in the Tea Estate of one Raju. The occurrence was in the gap where the Tea Plants have thickly raised. When the scene of occurrence was inspected, the straw and sand were found to be in a squeezed condition. The same was noted in Ex.P.2 – Observation Mahazar as:-

> **" சம்பவ இடத்தில் காய்ந்த பில் அமுக்கிய நிலையில் மண், பில்கள் சிதறிய நிலையில் உள்ளன. சம்பவம் நடந்த இடத்தில் இருந்து சுமார் 400 அடி தூரத்தில் வாதி கண்ணன் வீடு கிழக்கு நோக்கிய கதவு அமைந்த நிலையில் உள்ளது. வாதி வீட்டை அடுத்து சுமார் 15 அடி தூரத்தில் வடக்காக எதிரி சகாதேவன் வீடு உள்ளது ".**

The act of the accused in following P.W.2 to commit Rape on her and choosing the place / Tea Estate of Raju is thus well brought out lending assurance to the evidence of P.W.2.

18. Parents of P.W.2 viz. P.W.1 – Kannan and P.W.3 – Baby, returned back to their house at 7.15 p.m. They found P.W.2 crying. When they questioned P.W.2, she informed them about the Sexual act of the accused committed on her. The consistent version of P.Ws.1 and 3 sets forth contemporaneous narration of events strengthening the

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prosecution case. On being learnt that his daughter was being Sexually Molested, naturally P.W.1 – father complained the same to the Villagers viz. Raja, Aandi and Murugan. It is quite probable that he would have informed the same to other Villagers. On hearing the same, the accused had come there and had beaten P.W.1 on the back side and on his right arm. The act of the accused in beating P.W.1 is only in continuation of the earlier occurrence and there is no reason to doubt the version of P.W.1.

19. That P.W.1 – Kannan was beaten by the accused is proved by the Medical Evidence. On 13.01.1996, P.W.1 was examined by P.W.9 – Dr.Sivakumar. He has noted:- Two linear contusion on the back between scapula; contusion on the right Arm. Narration of the manner of assault to P.W.9 – Dr.Sivakumar that P.W.1 was beaten by one person lends assurance to the version of P.Ws.1 to 3.

20. P.W.10 – Dr.Shantha has examined P.W.2 – Saradha on 13.01.1996 – 9.45 a.m. On such examination, no external injuries were noted on the person of P.W.2. Her external Genetalia was normal; No Vaginal discharge; No fresh bleeding. "Vagina easily admits one finger". For a girl like P.W.2 aged Nine years, "Vagina easily admits one finger" is a clear proof that she was subjected to Rape and Sexual Violence. The reasonings of the learned Sessions Judge for brushing aside this unimpeachable evidence of Rape are unsustainable.

21. P.W.10 – Dr.Shantha has examined P.W.2 on 13.01.1996 – 9.45 a.m. – nearly Ten hours after the occurrence. Admittedly, P.W.2 had a wash. It is recorded even in Ex.P.8 – Accident Register that "Had a wash soon after coming house". Since there was no Vaginal discharge and there was no fresh bleeding and the external Genetalia was found normal, P.W.10 – Dr.Shantha has opined that " there is no evidence of recent rape " (Ex.P.9). According to P.W.10, Recent Rape means Rape within a period of Six hours. Admittedly, in this case P.W.2 was examined Ten hours after the occurrence. Naturally, the traces of Rape particularly " Vaginal discharge bleeding " would have been effaced by the Wash. This ought to have been taken note of by the learned Sessions Judge. " Vagina admits one finger easily " is the strong piece of evidence and unimpeachable in character which the learned Sessions Judge erred in not taking note of. Further had there been no such occurrence, why P.Ws.1 and 3 should point accusation finger against the accused risking the future of the young girl like P.W.2, who was then aged only Nine years. Under such facts and circumstances, this Court is of the view that the acquittal of the Appellant / Accused under S.376 I.P.C. is an unmerited one. Since there is no appeal by the State, the matter has to be left at that point.

22. The learned Sessions Judge has convicted the Appellant / Accused for the lesser offence under S.354 I.P.C. The accused made P.W.2 to lie down and penetrated. It is not only improper behaviour with the young girl of Nine years but it is also a clear case of Sexual Molestation. In consideration of the nature of the offence committed, the period of sentence of Rigorous Imprisonment

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of Two years imposed upon the Appellant / Accused is reasonable.

23. Contending that the Appellant / Accused was only aged Nineteen Years at the time of occurrence, the learned counsel for the Appellant / Accused prayed for Mercy and Modification of sentence. In cases of the Sexual Violence against the Teen aged girls and like offences against woman, it would be improper to reduce the sentence. It would not not only encourage further escalation of the crimes but also would become difficult to check of arrest the commission of those crimes. To prevent the commission of such crimes, ends of justice would be met if the period of sentence of Two years Rigorous Imprisonment is maintained. For the conviction under S.323 I.P.C., the sentence of Simple Imprisonment of Six months imposed upon the Appellant / Accused is also reasonable and the same is to be maintained. No valid grounds are made out warranting interference in the verdict of conviction and the sentence of Imprisonment. This appeal is devoid of merits and the same is liable to be dismissed.

24. Therefore, the Judgment of the District and Sessions Court, Udagamandalam in S.C.No.22 of 1997 (dated 27.02.1998) convicting the Appellant / Accused under Ss.354 I.P.C. and the sentence of Rigorous Imprisonment of Two years and convicting the Appellant / Accused under S.323 I.P.C. and the sentence of Simple Imprisonment of Six months are confirmed and this appeal is dismissed.

25. The trial Court is directed to take immediate steps for securing the Appellant / Accused to commit him to prison for serving the remaining period of sentence. The trial Court is also directed to comply with the above direction within three months and the compliance of the above direction may be intimated to this Court at once within the time stipulated.

sbi

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Sessions Judge,
   The Nilgiris District at
   Udagamandalam.

2. The Judicial Magistrate,
   Ootacamund.

3. -do- Thro' The chief Judicial
   Magistrate, Ootacamund.

4. The Superintendent,
   Central Prison, Coimbatore.

5. The Inspector of Police,
   G.2 Police Station, Udagamandalam.

6. The Public Prosecutor,
   High Court, Madras.

Copy to:-

The Section Officer,
Criminal Section,
High Court,
Madras.
(for watching the compliance report)

Pre-delivery Judgment
in Crl.A.No.349 of 1998

DATED: 23.12.2004

GM (CO)
EJ

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